

Nicholas P. Roxborough, Esq. (Bar No. 113540)
Michael L. Phillips, Esq. (Bar No. 232978)
ROXBOROUGH, POMERANCE & NYE LLP
5820 Canoga Ave., Suite 250
Woodland Hills, California 91367
Telephone: (818) 992-9999
Facsimile: (818) 992-9991
E-Mail: npr@rpnlaw.com
mlp@rpnlaw.com

Attorneys for Plaintiffs/Counter-Defendants, LARGO CONCRETE,
INC. and N.M.N. CONSTRUCTION, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LARGO CONCRETE, INC., a California
Corporation; N.M.N. CONSTRUCTION, INC., a
California Corporation.

Plaintiffs,

v.

LIBERTY MUTUAL FIRE INSURANCE
COMPANY, a Massachusetts Corporation, and
DOES 1 through 100, inclusive.

Defendants.

AND RELATED COUNTERCLAIM

Case No. C07-04651 CRB (ADR)
The Hon. Charles R. Breyer

**OPPOSITION TO LIBERTY MUTUAL
FIRE INSURANCE COMPANY'S
ADMINISTRATIVE MOTION TO FILE
EXHIBITS B AND F TO THE GREG
FARKAS DECLARATION UNDER SEAL
FOR *IN CAMERA* REVIEW**

Date: December 21, 2007
Time: 10:00 a.m.
Ctvm: 8

[Objections to Evidence; and [Proposed] Order
Filed and Served Concurrently Herewith]

Complaint filed: September 10, 2007

Plaintiffs/Counter-Defendants, LARGO CONCRETE, INC. and N.M.N. CONSTRUCTION,
INC. (hereinafter "Largo") hereby submit the following Opposition to Liberty Mutual Fire Insurance
Company's (hereinafter "LMF") Administrative Motion to File Exhibits "B" and "F" to the Greg
Farkas Declaration Under Seal for *In Camera* Review.

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1 Largo objects to LMF's administrative motion on the ground that LMF has failed to produce
 2 sufficient evidence that the information sought to be filed under seal contains confidential information
 3 subject to any privilege or that such info could not be shown to RPN without certain redactions. LMF
 4 refers the court to *Clark v. American Commerce Nat. Bank*, 974 F2d 127 for the proposition that certain
 5 correspondence, bills, ledgers, statements and time records which also reveal the motive of the client in
 6 seeking representation, litigation strategy, or the specific nature of the services provided can be
 7 protected by the attorney-client privilege. However, as the court also acknowledged, because the
 8 attorney-client privilege has the effect of withholding relevant information from the fact finder, it is
 9 applied only when necessary to achieve its limited purpose of encouraging full and frank disclosure by
 10 the client to his or her attorney. *Id.* at 129 (emphasis added).

11 Not all communications between attorney and client are privileged and the burden of
 12 establishing that the privilege applies to the documents in question rests with the party asserting the
 13 privilege. *American Commerce Nat. Bank* at 129. Blanket assertions of the attorney-client privilege
 14 are "extremely disfavored". *Id.* at 129. Furthermore, the identity of the client, the amount of the fee,
 15 the identification of payment by case file name, and the general purpose of the work performed are
 16 usually not protected from disclosure by the attorney-client privilege. *Id.* at 129 (emphasis added).

17 LMF has failed to offer a sufficient explanation as to why the "report" prepared by Greg Farkas
 18 that purportedly shows the fee and time entries for work performed by Craig Pynes during the period of
 19 January 1, 2003 through June 1, 2005 (Exhibit "B" to the Farkas Declaration) and partially redacted
 20 electronic invoices dated Mar 20, 2004 regarding the *Ashou* matter (Exhibit "F" to the Farkas
 21 Declaration) contain information that is subject to the attorney-client privilege. A blanket assertion,
 22 without further specificity, is insufficient. As the court in *American Commerce Nat. Bank* stated, the
 23 privilege must ordinarily be raised as to each record sought to allow the court to rule with specificity.

24 In the interests of justice, Largo is entitled to view evidence submitted by LMF in support of
 25 LMF's dispositive motion. LMF has produced no evidence that the exhibits sought to be filed under
 26 seal contain anything more than the identity of the client, the case name for which payment was made,
 27 the amount of the fee, and the general nature of the services performed; information which the court
 28

1 found in *American Commerce Nat. Bank* not to be protected by the attorney-client privilege. *American*
2 *Commerce Nat. Bank* at 130. To the extent LMF does not produce specific evidence, whether *in*
3 *camera* or otherwise, as to why Exhibits "B" and "F" are subject to the attorney-client privilege,
4 LMF's administrative motion to file such documents under seal should be denied.

5 DATED: December 18, 2007

ROXBOROUGH, POMERANCE & NYE LLP

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7 By: 

NICHOLAS P. ROXBOROUGH, ESQ.

MICHAEL L. PHILLIPS, ESQ.

8 Attorneys for Plaintiffs/Counter-Defendants,
9 LARGO CONCRETE, INC. and N.M.N.
10 CONSTRUCTION, Inc.
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